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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

In re J.L. et al., Persons Coming Under the  
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

A144486

(Alameda County  
Super. Ct. Nos. OJ13021089,  
OJ13021090)

Appellant J.L. (Father) ceased contact with two of his children in 2012, leaving them in the care of their mother, S.T. (Mother). A year later, the children were detained by the Alameda County Social Services Agency (Agency) as a result of neglect arising from Mother's substance abuse and mental illness. Father was given tardy notice of the dependency proceedings, and he did not actively participate in the proceedings for several months after receiving notice. By the time he was recognized as a presumed father, becoming eligible for reunification services, the juvenile court was only days away from terminating services to Mother and scheduling a permanency planning hearing. Father filed a petition to modify the order denying him reunification services, but the juvenile court denied the petition in favor of continuing a successful foster placement. Finding no abuse of discretion in the juvenile court's decision to deny reunification services, we affirm.

## **I. BACKGROUND**

In June 2013, dependency petitions were filed in connection with E.L. and J.L., the two-year-old twin daughters of Father and Mother. The petitions alleged Mother was no longer willing and able to care for the twins as a result of financial difficulties, due in part to her substance abuse. (Welf. & Inst. Code,<sup>1</sup> § 300, subd. (g).) Mother was also alleged to suffer from poorly treated bipolar disorder. At the time, the twins were living with Mother in a shelter.

The twins had lived with Father at his home in Oakland for the first 18 months of their lives, from December 2010 until May 2012. There was conflicting testimony about the extent of Mother's involvement in raising the twins during this time, but at some point Mother also began living in the home. In May 2012, Father was arrested on a charge of domestic violence against Mother, and she moved with the twins from his home. He had no further contact with the twins until well after the dependency proceedings commenced. By that time, the twins no longer recognized him.

At a jurisdictional hearing in June 2013, the twins were found to be dependents of the court, and Mother was granted reunification services. Due to an apparent error by the Agency, Father was not given notice of the hearing by mail, and attempts to reach him by telephone were unsuccessful.<sup>2</sup> Because he was classified by the Agency as an alleged father at that time, he was not eligible for reunification services, and they were not granted.

Father first learned of the dependency proceedings the following month, when the Agency reached him by telephone. At the Agency's suggestion, Father attended a dependency orientation program. During that orientation, he was told "what to do to get your kids back" and spoke with the social worker in charge of the twins' case, who told

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Although the Agency listed Father's correct residence address in the dependency petitions, the jurisdictional/dispositional report incorrectly listed his address as "unknown," and he was not provided mailed notice. There was no explanation for the error.

him he had missed a court hearing. Afterwards, he took no steps to reestablish contact with the twins or participate actively in the dependency proceedings. In September 2013, the twins were placed with their aunt, Mother's sister. Father contacted the Agency in October 2013, but again he took no action afterwards to participate in the dependency proceedings. He was later given the opportunity to call or visit with the twins by their foster mother, but he did not take advantage of the offer.

After the six-month review hearing in December 2013, Father told an Agency social worker that he wanted to begin visitation with the ultimate objective of taking custody of the twins. In February 2014, the Agency attempted to arrange for therapeutic visits, but the organization that conducted the visits had no immediate openings. Father was placed on a waiting list, and the visits did not begin until May 2014.

In late January 2014, Father filed a request to be elevated from alleged to presumed father, which was granted after a hearing on March 5. Less than a week after Father's elevation, on March 11, 2014, the juvenile court terminated reunification services to Mother and scheduled a section 366.26 permanency planning hearing. At the hearing, Father's counsel informed the court he had prepared, although apparently not filed, a petition under section 388 for modification of the order denying reunification services to Father.<sup>3</sup> Counsel requested that the court grant immediate reunification services to Father or delay scheduling the permanency planning hearing until a ruling on the section 388 petition, but the court denied the request.

Father's section 388 petition was not filed until June 27, 2014.<sup>4</sup> By that time, Father had successfully completed four visits with the twins. He continued to attend regular twice-monthly visits through December, but he had little contact with the twins outside those visits. Although they were affectionate with Father, the twins appeared to

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<sup>3</sup> Section 388 does not anticipate oral motions for modification, since it requires the petition to be verified and contains specific requirements for its content. (*Id.*, subd. (a)(1).)

<sup>4</sup> Father filed a petition for an extraordinary writ in this court challenging the juvenile court's denial of his request. He appears to have delayed filing the section 388 petition until after our denial of that writ petition.

resist referring to him as their father. Father declined to attend voluntary parenting classes arranged by the Agency.

In the meantime, the twins' placement with their aunt had been successful. She had known them since their birth, and they thrived in her care. She had her own family of two older children and was committed to seeking adoption of the twins.

Testimony relating to Father's section 388 petition began in August 2014 and stretched over several months. The juvenile court eventually denied the petition in January 2015. In evaluating the best interests of the twins, the court weighed a number of factors, but it was ultimately persuaded that they had only a limited bond with Father, notwithstanding his evident concern and love for them, because of the two-year lapse in contact. In contrast, they had developed a strong bond with their foster mother over the course of an extended, successful period of residence with her. Finding the twins' need for stability and permanence to outweigh the potential benefits of a reunification with Father, the court concluded their best interests would not be served by further extending the reunification period.

## **II. DISCUSSION**

Section 388 provides, in relevant part, "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . ." To prevail on a petition under section 388, the petitioner must not only demonstrate changed circumstances, but must also show that the requested modification is in the best interests of the child. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) The petitioner has the burden of proof in demonstrating the circumstances supporting the modification by a preponderance of the evidence. (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116 (A.R.).)

If a man fails to achieve presumed father status prior to the expiration of the reunification period in a dependency proceeding, he is no longer entitled to reunification services and must seek them through a section 388 petition. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 453.) At that point in the proceedings, the father's interest in reunifying

with the child is no longer of overriding importance and must be balanced with the child's need for a stable, permanent home. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Notwithstanding the focus on the child's interest in permanence and stability, the decision to modify an order terminating reunification services does not involve "a simple comparison between two households [of the parent and caretaker]." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530.) Rather, the juvenile court must consider a variety of factors, including the strength of the child's bonds to the parent and the caretaker and the nature of the change in circumstances. (*Id.* at pp. 530–531.)

"A petition for modification is 'committed to the sound discretion of the juvenile court, and the trial court's ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.]' [Citations.] ' . . . "[ ]The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " " " (A.R., *supra*, 235 Cal.App.4th at pp. 1116–1117.)<sup>5</sup>

We assume for purposes of this analysis that Father's elevation to presumed father status was a sufficient change of circumstances to satisfy section 388. Because he was ineligible for reunification services prior to that time, the change in his legal status effected a substantial change in the nature of his participation in the dependency proceedings.

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<sup>5</sup> The Agency argues this matter is not appealable because the juvenile court's ruling resulted in the scheduling of a section 366.26 hearing. (§ 366.26, subd. (I).) Because the section 366.26 hearing was scheduled nearly a year before the resolution of Father's section 388 petition, we find section 366.26, subdivision (I) inapplicable.

Nonetheless, we find no abuse of discretion in the juvenile court's conclusion that the twins' best interests would not be served by a grant of reunification services to Father. As discussed above, once the permanency planning hearing was scheduled, the court was required to place primary emphasis on the twins' need for stability and permanence. They had successfully adjusted to their aunt's home and formed strong familial bonds with her, and she was willing to make that home permanent. Reopening the reunification process would have placed that stability at risk by introducing another potential parental figure into their lives. While that risk might have been justified if they were strongly attached to Father, that was not the case. During his two-year absence from their lives, Father had become, in effect, a stranger. Further, he did not actively pursue the opportunities provided by the foster mother and the Agency to reintroduce himself to their lives outside the twice-monthly arranged visits. While the twins appeared to enjoy their visits with Father, they had not accepted him as a parent. As a result, at the time of the hearing on the section 388 petition, the juvenile court could properly conclude, in weighing the twins' best interests, that the prospect of reunification with Father did not outweigh the stability and permanence offered by their potential adoptive placement.

Father argues his case should have been treated differently because he was not given prompt notice of the dependency proceedings and suffered from various delays in the establishment of his right to reunification services. While we acknowledge that the Agency should have provided Father notice of the proceedings prior to the jurisdictional hearing in June 2013, he was located soon after and attended a dependency orientation session in July. At that time, he was given information about the proceedings and spoke with the responsible social worker. Yet during the critical period from July to December 2013, when Mother was receiving reunification services, Father took no effective steps to become involved in the proceedings or reestablish contact with the twins. It was not until late January 2014, six months after he first received notice of the proceedings, that Father sought presumed father status. Further, despite informal opportunities to begin rebuilding his relationship with the twins, he had no contact with them until therapeutic visits began in May 2014. The failure of Father to establish a

meaningful bond with the twins and a right to reunification prior to the scheduling of the permanency planning hearing was attributable as much to his own inaction as to any failure of diligence by the Agency or the court.

Father also contends the juvenile court relied on erroneous factual findings in denying the section 388 petition. We have examined the claimed errors and find them to be insubstantial. For example, Father argues the court erred in stating that Father was unable to care for the twins when the dependency proceedings were initiated. While it is true there is no evidence Father was unable to care for the twins at this time, he had cut ties with them and Mother nearly a year earlier. As a practical matter, he had abandoned them to Mother's care. In any event, the court did not rely heavily on this fact in concluding the twins' best interests would not be served by reinstituting reunification services. The other claimed errors are similarly immaterial.

### **III. DISPOSITION**

The order of the trial court is affirmed.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.